

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

August 15, 2018

Charles E. Duffy
SBI # 00071033
Sussex Correctional Institution
P.O. Box 500
Georgetown, Delaware 19947

RE: *State of Delaware v. Charles E. Duffy*,
Case ID# 1709009959

DATE SUBMITTED: July 12, 2018

Dear Mr. Duffy:

Defendant Charles E. Duffy ("Defendant") has filed his first Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 ("Rule 61").¹ For the reasons expressed below the motion is **DENIED**.

On January 12, 2018, Defendant pled guilty to one count of Violation of Privacy. He was sentenced to six years at Level 5 for that offense. On July 12, 2018, Defendant filed his first Postconviction Motion. He claims that: (1) his Fifth Amendment rights were violated because he was not provided a lawyer as requested and because he was intoxicated during the interrogation; (2) his counsel was ineffective because he did not pursue the *Miranda*² issue, view the video

¹ The applicable version of Rule 61 is that effective on June 4, 2014, as amended by an order of this Court dated March 23, 2017.

² *Miranda v. Arizona*, 384 U.S. 486 (1966).

footage from the place of the crime, or question the victim; (3) the arresting officer made false statements about the type of clothing the victim was wearing; (4) he was wrongfully sentenced as a habitual offender; (5) he should have been charged with a non-violent felony for this offense; (6) the video from the place of the crime would prove his actual innocence; (7) his Fourteenth Amendment rights were violated because defense counsel and the prosecution conspired to coerce Defendant into taking a guilty plea; (8) the prosecutor acted improperly in relying on his past criminal history to declare him a habitual offender, failing to call the victim for questioning, failing to acknowledge Defendant's good behavior while on probation, and threatening Defendant with additional new charges if he did not take the plea offer; and (9) he should have been sentenced under the same law for which he was sentenced in 1984 because he was still serving the sentence imposed under that law when he was arrested in September 2017.

The first step in evaluating a motion under Rule 61 is to determine whether any of the procedural bars listed in Rule 61(i) will force the motion to be procedurally barred.³ All of

³ Super. Ct. Crim. R. 61(i) provides:

(i) Bars to Relief. (1) *Time limitation.* A motion for postconviction relief may not be filed more than one year after the judgment of conviction is final or, if it asserts a retroactively applicable right that is newly recognized after the judgment of conviction is final, more than one year after the right is first recognized by the Supreme Court of Delaware or by the United States Supreme Court.

(2) *Successive motions.* (i) No second or subsequent motion is permitted under this Rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule. (ii) Under paragraph (2) of subdivision (b) of this Rule, any first motion for relief under this rule and that first motion's amendments shall be deemed to have set forth all grounds for relief available to the movant. That a court of any other sovereign has stayed proceedings in that court for purpose of allowing a movant the opportunity to file a second or subsequent motion under this rule shall not provide a basis to avoid summary dismissal under this rule unless that second or subsequent motion satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.

(3) *Procedural default.* Any ground for relief that was not asserted in the proceedings leading to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (A) Cause for relief from the procedural default and (B) Prejudice from violation of the movant's rights.

Defendant's claims, with the exception of his ineffective assistance of counsel claim, are barred by Rule 61(i)(3). This provision states that "any ground for relief that was not asserted in the proceedings leading up to the judgment of conviction, as required by the rules of this court, is thereafter barred, unless the movant shows (A) cause for relief from the procedural default and (B) prejudice from violation of the movant's rights."⁴ In order to show cause, Defendant has to allege more than the fact that a claim was not raised earlier in the process.⁵ Defendant must show that "some external impediment" prohibited raising the claim.⁶ Further, to show prejudice, Defendant must demonstrate that there was a "substantial likelihood" that, had the claim been raised, the outcome of the case would have been different.⁷ In essence, Defendant has to show that he would not have been convicted if the claim had been raised.⁸ Defendant must show both cause and prejudice to overcome the procedural default bar.⁹ Here, Defendant did not demonstrate cause or prejudice; therefore, his claims are procedurally barred. Additionally, it is clear from Defendant's plea colloquy that he was not coerced into taking the guilty plea and that he was aware that by agreeing to the plea deal he was giving up valuable trial and appeal rights. He cannot now attempt to surreptitiously make arguments he knowingly gave up.

(4) *Former adjudication*. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred.

(5) *Bars inapplicable*. The bars to relief in paragraphs (1), (2), (3), and (4) of this subdivision shall not apply either to a claim that the court lacked jurisdiction or to a claim that satisfies the pleading requirements of subparagraphs (2)(i) or (2)(ii) of subdivision (d) of this rule.

⁴ Rule 61(i)(3).

⁵ *State v. Wescott*, 2014 WL 7740466, at *1 (Del. Super. Ct. Nov. 24, 2014).

⁶ *Id.* (citing *Younger v. State*, 580 A.2d 552, 556 (Del. 1990)).

⁷ *Flamer v. State*, 585 A.2d 736, 748 (Del. 1990).

⁸ *Id.*

⁹ *Blackwell v. State*, 736 A.2d 971, 973 (Del. 1999).

However, given that this is Defendant's first Postconviction Motion, his claims of ineffective assistance of counsel are not procedurally barred. He asserts that defense counsel should have pursued the *Miranda* issue, viewed the video footage from the place of the crime, and questioned the victim. To prevail on such a claim, Defendant must meet the two-prong test laid out by the United States Supreme Court in *Strickland v. Washington*.¹⁰ *Somerville v. State* explained the applicable standard in the context of a guilty plea:

Strickland requires a defendant to show that: (1) counsel's representation fell below an objective standard of reasonableness, and (2) counsel's actions were so prejudicial that there was a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial...[R]eview is subject to a strong presumption that counsel's conduct was professionally reasonable. The purpose of this presumption is to eliminate the distorting effects of hindsight in examining a strategic course of conduct that may have been within the range of professional reasonableness at the time.¹¹

Defendant has not met either prong of the analysis. He made no showing to prove that his counsel acted below an objective standard of reasonableness when providing assistance at Defendant's plea hearing and sentencing. Nor can Defendant show that, but for counsel's errors, he would have insisted on proceeding to trial. Moreover, the plea colloquy shows that Defendant knowingly, intelligently, and voluntarily entered into the plea. Defendant was aware of the rights he was giving up and the consequences of taking the plea. Defense counsel did not act improperly while representing Defendant.

Considering the foregoing, Defendant's Motion for Postconviction relief is **DENIED**. As Defendant's Motion for Postconviction relief is denied, Defendant's Motion for Appointment of Counsel is also **DENIED**.

IT IS SO ORDERED.

¹⁰ *Strickland v. Washington*, 466 U.S. 668 (1984).

¹¹ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997).

Very truly yours,



Richard F. Stokes

cc: Prothonotary's Office